



County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

September 9, 2011

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From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

This memorandum contains a pursuit of a County position on legislation regarding loans from the Uninsured Employers Benefit Trust Fund; an update on two County-sponsored measures related to the Los Angeles Regional Interoperable Communications System Authority and the drawdown of Federal matching funds to provide medical treatment for detained minors; the status of six County-advocacy measures; and reports on County-interest legislation regarding: 1) public safety realignment; 2) technical revisions to the 2011 Realignment funding structure; 3) the designation of a provider organization to negotiate the terms and conditions of employment for child care providers; and 4) the expedited judicial review of environmental impact reports for City of Los Angeles projects and similar projects throughout the State.

Legislature to Adjourn for the Recess

The Legislature is scheduled to adjourn the first year of the 2011-12 legislative session today and will reconvene on January 4, 2012.

Pursuit of County Position on Legislation

AB 436 (Solorio), which as amended on August 30, 2011, would: 1) make revisions regarding the method by which the State Department of Industrial Relations (DIR) sets reimbursement rates for its costs of performing prevailing wage monitoring and enforcement on specified public works projects when the reimbursement to the department may be waived; 2) exempt from those requirements public works projects financed in any part by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002; and 3) allow the Director of the Department of Finance to

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authorize a loan not to exceed \$4.3 million from the Uninsured Employers Benefit Trust Fund to the State Public Works Enforcement Fund to meet the start-up needs of DIR's compliance monitoring unit.

The recent amendments to AB 436 would make changes to existing law related to a prevailing wage enforcement mechanism to address potential legal questions about the funding method of that process.

The Chief Executive Office (CEO) Risk Management has expressed concerns with provisions in the bill which would allow the Director of the Department of Finance to authorize a loan from the Uninsured Employers Benefit Trust Fund (UEBTF). According to CEO Risk Management, the UEBTF is a trust fund paid into by insured employers, including the County, which buy insurance for workers' compensation coverage for their employees. The fund provides benefits for employees who were injured while working for an employer that failed to buy workers' compensation insurance. Typically these are employers which are not of sufficient size to be self insured.

The Chief Executive Office Risk Management further notes that UEBTF funds were nearly exhausted by the end of 2010 due to an increasing number of workers' compensation claims. If the UEBTF had been depleted, some injured workers might not have received payment for their claims. Consequently, employers were assessed higher fees in order to replenish the fund. The loan required by this bill could recreate the fiscal difficulty recently resolved through the higher assessment. Further, AB 436 contains no loan repayment schedule which would guarantee replenishment of the UEBTF by the Department of Finance.

The Chief Executive Office opposes the loan provision in AB 436. Therefore, consistent with existing Board policy to oppose legislation that would transfer to Los Angeles County or its residents any costs or revenue losses incurred by another jurisdiction, **the Sacramento advocates will oppose AB 436.**

This measure is sponsored by the State Building and Construction Trades Council of California and supported by the Solice Group. It is opposed by the California Coalition on Workers' Compensation.

AB 436 passed the Senate Floor by a vote of 22 to 10 on September 7, 2011. This measure now proceeds to the Assembly Floor.

Status of County-Sponsored Legislation

County-sponsored AB 396 (Mitchell), which would allow counties and the California Department of Corrections and Rehabilitation to draw down Federal matching funds to

reimburse them for the medical treatment of minors who are hospitalized and outside of detention facilities for more than 24 hours, passed the Assembly Floor by a vote of 68 to 0 on September 8, 2011. This measure now proceeds to the Governor.

County-sponsored AB 946 (Lowenthal), which as amended on August 31, 2011, would authorize the County of Los Angeles, or the Los Angeles Regional Interoperable Communications System Authority located in Los Angeles County, to procure a regional interoperable communications system by utilizing a solicitation process to award a contract for the design and build of a regional interoperable communications system and related infrastructure, passed the Assembly Floor by a vote of 72 to 0 on September 9, 2011. This measure now proceeds to the Governor.

Status of County-Advocacy Legislation

County-opposed AB 74 (Ma), which as on September 2, 2011, would prohibit the California Department of Food and Agricultural from entering into cooperative agreements with a county of the first class for agricultural inspector services, unless at least 66 percent of agricultural inspector aides are hired as permanent employees, passed the Assembly Floor by a vote of 66 to 13 on September 8, 2011. This measure now proceeds to the Governor.

County-opposed AB 341 (Chesbro), which as amended on September 2, 2011, would increase the mandatory solid waste diversion rate from 50 percent to 75 percent and require local governments to implement a commercial recycling program, passed the Assembly Floor by a vote of 49 to 29 on September 8, 2011. This measure now proceeds to the Governor.

County-supported AB 959 (Jones), which as amended on August 31, 2011, would provide a one-month grace period to participants in the CalWORKs and CalFresh programs for filing required quarterly reports, passed the Assembly Floor by a vote of 68 to 0 on September 8, 2011. This measure now proceeds to the Governor.

County-supported AB 1297 (Chesbro), which as amended on August 31, 2011, would conform State claiming and reimbursement for specialty mental health services to Federal Medicaid regulations, passed the Assembly Floor by a vote of 79 to 0 on September 8, 2011. This measure now proceeds to the Governor.

County-supported SB 450 (Lowenthal), which as amended on September 2, 2011, would impose restrictions on the use of Low and Moderate Income Housing funds by Redevelopment Agencies, passed the Senate Floor by a vote of 40 to 0 on September 8, 2011. This measure now proceeds to the Governor.

County-opposed SB 734 (DeSaulnier), which as amended on September 2, 2011, would, among other provisions, impose certain requirements related to the expenditure of Workforce Investment Act (WIA) funds for adult and dislocated worker job training programs by requiring that at least 25 percent beginning in program year 2012 and at least 30 percent beginning in program year 2016 of WIA funds be spent on job training programs; and allow up to 10 percent of leveraged resources to be credited to meeting this threshold. This measure passed the Assembly Floor by a vote of 46 to 21 on September 9, 2011 and now proceeds to the Senate Floor for concurrence of Assembly amendments.

SB 734 is also opposed by the California State Association of Counties; California Workforce Association; the Counties of Riverside and Orange; among others. The measure is supported by the California Labor Federation, AFL-CIO (cosponsor); California Manufacturers and Technology Association (co-sponsor); California Teachers Association; Jewish Vocational Services of Los Angeles; Chicana Service Action Center; Watts Labor Community Action Committee; Council of California Goodwill Industries; among others.

Legislation of County Interest – 2011 Public Safety Realignment

ABX1 16 (Blumenfield), which as amended on September 2, 2011, would make technical changes to AB 118 (Chapter 40, Statutes of 2011) which implemented the 2011 Public Safety Realignment and established the funding structure to transfer \$5.6 billion in funding for counties to assume responsibilities from the State for various public safety, mental health, substance abuse treatment, child welfare services, foster care and adult protective services programs.

The following is a summary of the key changes included in the bill:

- **Title IV-E Child Welfare Demonstration Capped Allocation Project Costs.** The bill clarifies that funding for Realignment under the Foster Care Subaccounts (i.e. Foster Care Assistance Subaccount and Foster Care Administration Subaccount) include costs for the Title IV-E Child Welfare Demonstration Capped Allocation Project.
- **Human Services Percent Allocations.** The bill changes the Health and Human Services percent allocations as follows: 1) 21.7 percent for the Foster Care Assistance Subaccount; 2) 37.1 percent for the Child Welfare Services Subaccount; 3) 21.2 percent for the Adoption Assistance Program Subaccount; and 4) 2.2 percent for the Foster Care Administration Account.

- Elimination of AB 3632 Mandate and Residential Placement Savings. The bill requires counties to redirect savings from no longer paying a share of residential placement costs for mental health services for special education students (AB 3632) to reinvest those savings in foster care, child welfare services or adoption programs. The bill also includes legislative intent language that the requirements shall not result in net costs to any county. The California Department of Social Services, in consultation with the Department of Finance and County Welfare Directors Association, will calculate the savings based on what each county spent on residential placement costs in FYs 2007-08, 2008-09 and 2009-10.
- Intent Language. The bill includes legislative intent language that legislation to implement the 2011 Realignment shall address, as a priority, funding necessary for local public safety and funding for child welfare services and foster care programs necessary to achieve critical outcomes, including State and Federal performance reviews. It is important to note that this is simply intent language, and does not actually allocate increased funding. The statewide total amount of \$1.567 billion that would be realigned to counties for child welfare services, foster care and adoption assistance programs does not change under the bill.

The Department of Children and Family Services (DCFS) is determining if the percent allocations under the bill, such as for the Foster Care Assistance Subaccount and the Child Welfare Services Subaccount, will cover current costs for these programs. In addition, the California Department of Social Services staff has notified DCFS that it will issue a County Fiscal Letter within the next week and more information will be available at that time.

In addition, AB 118 of 2011 transferred \$1.077 billion statewide in 1991 Realignment revenue to fund the State's portion of the increased county share of costs for CalWORKs grants which increased from 2.5 percent to 40.0 percent. The following is a summary of provisions in ABX1 16:

- LEADER Replacement System. The measure directs the State Office of Service Integration to oversee and report by February 1, 2012, a timeline and key milestones regarding the consolidation of the State's existing three consortia with separately operated systems that provide eligibility processing for the CalWORKs, CalFresh, Medi-Cal and other programs into two consortia, including Los Angeles County's LEADER Replacement System. According to Department of Public Social Services (DPSS), there is no impact to the County.

- CalWORKs. The measure creates a CalWORKs Maintenance of Effort Subaccount in the 1991 Realignment to fund CalWORKs grants. According to DPSS, there is no impact to the County, as the County's contribution toward grants shall be equal to the total amount of funds deposited into the CalWORKs Maintenance of Effort Subaccount.

The California State Association of Counties is working with the Administration on legislative fixes to the realignment funding structure, including providing funding for program growth, local flexibility and the transfer of funding between accounts for FY 2012-13, and this effort will continue in 2012.

ABX1 16 passed the Senate Floor by a vote of 23 to 15 on September 7, 2011, and the Assembly Floor by a vote of 41 to 25 on September 8, 2011. This measure now proceeds to the Governor.

ABX1 17 (Blumenfield), which as amended on September 2, 2011, would provide necessary technical fixes and clarifications to AB 109 (Chapter 15, Statutes of 2011) and AB 117 (Chapter 39, Statutes of 2011) which enacted the public safety realignment shifting responsibility for the supervision of low-level offenders from the State to counties and changed the sentencing structure for non-violent, non-serious and non-sex felony offenses, passed the Assembly Floor by a vote of 41 to 26 on September 8, 2011. This measure now proceeds to the Governor.

Other Legislation of County Interest

AB 101 (J. Pérez), which as amended on September 2, 2011, would authorize licensed family child care providers and license-exempt child care providers to designate a provider organization to negotiate the terms and conditions of employment, passed the Senate Floor by a vote of 23 to 15 on September 8, 2011 and the Assembly Floor by a vote of 48 to 23 on September 9, 2011. This measure now proceeds to the Governor.

SB 292 (Padilla), as amended on September 7, 2011, would expedite the judicial review of the environmental impact report for the modernization of the Los Angeles Convention Center and Farmers Field Project.

Under existing law the California Environmental Quality Act (CEQA) requires a lead agency with the principal responsibility for carrying out or approving a proposed discretionary project to evaluate the environmental effects of its action and prepare a negative declaration, mitigated negative declaration, or Environmental Impact Report (EIR). If an initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR. A lead agency must base its determination of significant effects on substantial evidence. Current law also authorizes

judicial review of CEQA actions taken by public agencies, following the agency's decision to carry out or approve the project. Challenges alleging improper determination that a project may have a significant effect on the environment, or alleging an EIR does not comply with CEQA, must be filed in the Superior Court within 30 days of filing of the notice of approval.

As amended, SB 292 would establish an expedited judicial review; procedures for a lead agency relative to handling the EIR; and require implementation of specified traffic and air quality mitigation measures under the CEQA for the proposed downtown Los Angeles Convention Center modernization and Farmers Field Project. Specifically, this bill would:

- Set specified time frames and deadlines for filing and responding to challenges of the EIR for a downtown stadium in Los Angeles allowed under CEQA.
- Permit the Court of Appeals to appoint, or the applicant to request, a Special Master to assist in the expedited review of the appeal. The applicant would be responsible for up to \$150,000 in reasonable costs for this appointment. If the Court finds that costs will exceed \$150,000 it may request additional funds from the applicant and if the applicant agrees to provide more funds, may use them to pay the additional costs of the Special Master.
- Require the stadium project to reduce greenhouse gas emissions in the proposed stadium site and produce a report to document those efforts.
- Require the project's vehicle trip ratio to be less than 90 percent of other stadiums serving a National Football League team. A report documenting efforts to achieve this would also be required. If a trip ratio of less than 90 percent is not reached, the bill would establish specific actions that may be required of the applicant to help achieve that goal such as providing more public transit options.

According to the author, SB 292 does not propose an exemption from CEQA's EIR process or from judicial review. The bill would establish an expedited judicial review process in which any party with any concern could seek a judicial review directly with the Court of Appeal, bypassing Superior Court. Additionally, once in court, both parties would be required to adhere to strict time limits provided for judicial review, which is 175 days from start to finish. According to various sources, this process can typically take nine to 12 months.

SB 292 also would provide three new steps to maximize public participation, as follows:
1) establish a workshop immediately after release of the draft EIR at which the city and the environmental experts would brief the public on the details and conclusions of the

EIR; 2) provide for a public hearing before the close of the comment period; and 3) establish a mediation process to provide the public 30 days to address concerns before the final EIR is released. Any agreements reached in the mediation would be adopted as conditions of approval of the project.

The Department of Public Works (DPW) indicates that since SB 292 is specific to the Los Angeles Convention Center modernization and Farmers Field Project it would not impact the County's transportation facilities, systems, or projects. In addition, DPW does not expect the provisions of SB 292 to impact the County's traffic services including intersections or roadways. DPW indicates that the Legislature's intent to require the project to minimize traffic congestion and air quality impacts that may result from private automobile trips to the stadium is positive.

County Counsel states that SB 292 is specific to the proposed stadium in the downtown area of the City of Los Angeles. In the past, the Legislature has completely exempted projects from CEQA compliance on rare occasions. County Counsel also indicates that this legislation would truncate the procedure and time frames for challenging the project for violating CEQA requirements and would prescribe certain mitigation measures related to traffic and green house gases. It cannot be determined at this time whether the prescribed measures would be effective in mitigating the project's impacts.

Further, according to County Counsel, the County has no jurisdiction over the project; however, a Joint Powers Authority (JPA) of which the County is a member, may be required to approve the project if it results in the demolition of part of the Convention Center. In that case, a JPA would be required to assess the adequacy of the EIR for the project. County Counsel also indicates that, separate and apart from a JPA, in the event that the County independently decided to challenge the approval of the Los Angeles Convention Center modernization and Farmers Field Project, including the EIR, the County would be subject to the same expedited timelines and procedures expected from any other challenger.

The Department of Regional Planning concurs with comments made by County Counsel.

SB 292 is sponsored by the Anschutz Entertainment Group and Los Angeles County Federation of Labor and supported by numerous organizations and businesses, including Downtown Los Angeles Central Business Improvement District, Downtown Los Angeles Neighborhood Council, California Hospital Medical Center, California Labor Federation, California State Council of Laborers, LAX Coastal Chamber of Commerce, United Way of Greater Los Angeles, Los Angeles Business Council, Los Angeles City Franchise Tax Association, Los Angeles Conservation Corps and others. There is no registered opposition on file.

SB 292 passed the Assembly Floor by a vote of 63 to 13 on September 7, 2011 and the Senate Floor by a vote of 32 to 7 on September 9, 2011. This measure now proceeds to the Governor.

AB 900 (Buchanan), which as amended on September 8, 2011, would enact the Jobs and Economic Improvement through Environmental Leadership Act of 2011 and establish specified judicial review of an EIR and approvals of leadership projects related to the development of a residential, retail, commercial, sports, cultural, entertainment, recreational use, clean renewable energy, or clean energy manufacturing projects.

AB 900 would among provisions authorize the Governor to certify a leadership project for streamlining if specific conditions are met. The bill also would set specified time frames and deadlines for filing and responding to challenges of an EIR leadership project allowed under CEQA.

The Governor would issue guidelines regarding application and certification of projects pursuant to the provisions of AB 900, which would not be subject to the rulemaking provisions of the Administrative Procedure Act. If the Governor determines that a leadership project is eligible for streamlining, the determination, and any supporting information would be submitted to the Joint Legislative Budget Committee for review and consideration for concurrence. The following conditions are required to qualify for the leadership project:

- The project would result in a minimum investment of \$100 million in California upon completion of construction.
- The project would create high-wage high-skilled jobs that pay prevailing wages and living wages and provide construction jobs and permanent jobs for Californians, and help reduce unemployment.
- The project would not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation, as determined by the State Air Resources Board.
- The project applicant has entered into a binding and enforceable agreement that all mitigation measures required to certify the project shall be conditions of approval of the project, and those conditions will be fully enforceable by the lead agency or another agency designated by the lead agency.
- The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a Special Master if deemed appropriate by the court.

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- The project applicant agrees to pay the costs of preparing the administrative record for the project in a form and manner specified by the lead agency for the project.

AB 900 would set specified time frames and deadlines for filing and responding to challenges and establish an expedited judicial review, allowing any party with concerns to seek judicial review directly in the Court of Appeal, bypassing Superior Court, thereby expediting judicial review. Additionally, once in court, both parties would be required to adhere to strict time limits provided for judicial review.

The Chief Executive Office is currently working with the DPW, Regional Planning, and County Counsel to fully analyze AB 900 to determine potential County impact. However, based on a preliminary analysis, County Counsel indicates that for a private qualifying leadership project, the applicant, not the lead agency, makes the election; therefore, the County will have to follow the streamlined process. The details of the briefing schedule are not specified and it is up to the judicial council to adopt rules; therefore, the impact is unknown at this time. The lead agency will also be required to enforce those requirements which might be quite burdensome. Further, in the event that the County independently decided to challenge any of the projects, including the EIR, the County would be subject to the same expedited timelines and procedures.

There is no registered support or opposition to AB 900 at this time as the bill was amended today. AB 900 would become operative only if SB 292 is enacted and takes effect on or before January 1, 2012.

AB 900 passed the Senate Floor by a vote of 32 to 7 on September 9, 2011. This measure is currently on the Assembly Floor.

We will continue to keep you advised.

WTF:RA
MR:IGEA:sb

c: All Department Heads
Legislative Strategist
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Coalition of County Unions
California Contract Cities Association
Independent Cities Association
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